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Chair

Mrs. Bernadette Jordan

Standing Committee on Fisheries and Oceans

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● (1210)

[*English*]

The Chair (Mrs. Bernadette Jordan (South Shore—St. Margarets, Lib.)): Good afternoon, everyone. Welcome to meeting number 99 of the Standing Committee on Fisheries and Oceans. Pursuant to the order of reference of Monday, April 16, 2018, we are studying Bill C-68, an act to amend the Fisheries Act and other acts in consequence.

We will have to convene this meeting a little earlier than we originally thought. For the first hour, from the Tsleil-Waututh Nation, we have Matt Thomas, acting director economic development, by video conference.

Can you hear me?

Mr. Matt Thomas (Acting Director, Economic Development, Tsleil-Waututh Nation): Yes, I can.

The Chair: Perfect. Thank you.

We also have with us Bridget Doyle, natural resources planner, treaty, lands and resources department.

By video conference, we have Ray Orb, president of the Saskatchewan Association of Rural Municipalities.

Can you hear me?

Mr. Ray Orb (President, Saskatchewan Association of Rural Municipalities): Yes.

The Chair: Perfect. Thank you.

We also have, from the Canadian Federation of Agriculture, Ron Bonnett, the president, who is here in person.

Thank you very much.

Mr. Thomas and Ms. Doyle, you have the first 10 minutes. I don't know if you're splitting your time or if one person will be speaking.

Mr. Matt Thomas: Just one at this time.

The Chair: Okay.

Go ahead, please, for your first 10 minutes.

Mr. Matt Thomas: Thank you, Madam Chair.

Good afternoon, committee members. Thank you for the invitation to present to you today on the important matter of Bill C-68, an Act to amend the Fisheries Act and other acts in consequence. We are here today to specifically address the Fisheries Act.

My name is Matt [illegible]as. I am a Tsleil-Waututh member and acting director of the Tsleil-Waututh Nation's economic development department. From here on in, I will refer to Tsleil-Waututh Nation as TWN. I have an extensive history of working on fisheries and fisheries-related files in various roles with the nation. I continue to play an active role in managing TWN food, social, ceremonial, and commercial fisheries. I am joined by Bridget Doyle, natural resources planner for TWN, and Michael George, cultural and technical adviser for TWN.

Today, I will speak to our priorities that reflect how we, as first nations that hold rights under section 35 of the Canadian Constitution, will be impacted through legislation, regulation, and policy. I urge you to refer to our written submission for more details and priority topic areas.

I would like to begin with a brief introduction to the TWN so that you understand a bit more about who we are and the perspective that we have. TWN are the People of the Inlet, and we have used and occupied the lands and waters of Burrard Inlet since time out of mind. The TWN community is located on the north shore of the Burrard Inlet in North Vancouver, British Columbia. We hold a sacred obligation and responsibility to steward our lands and waters for our ancestors, for our generation, and for those to come. TWN does this through actively asserting and exercising our stewardship and governance rights. This includes participating in consultations with the crown over the hundreds of development projects proposed within our territory every year, many of which relate to authorizations under the Fisheries Act. We are also heavily engaged in proactive initiatives that assert TWN stewardship and governance rights to monitor, protect, and restore ecological integrity and functioning. This includes the protection, restoration, and management of fish and fish habitat.

Arguably, no Canadian legislation other than the Indian Act, 1985, has imposed the same level of determination over first nations physical, cultural, spiritual, and economic health and well-being as the Fisheries Act. In our view, the revision and modernization of the Fisheries Act provides a much-needed systemic shift in how Canada engages with the indigenous groups to manage fish, fish habitat, and fisheries. The proposed amendments contained within Bill C-68 offer a significant improvement over the existing Fisheries Act. Most notably, TWN applauds the Government of Canada for repealing the definition of commercial, recreational, and aboriginal fisheries. We also applaud the reinstating of broader protections under the harmful alteration, disruption, or destruction of the fish habitat provision.

However, we have remaining concerns that specifically affect TWN as a rights-holder. We believe the purpose section needs to be strengthened and broadened to reflect modern fisheries governance and management issues in Canada as well as the outcomes the law is intended to deliver. For managing fish and fish habitat, this must include the purpose of restoration. Due to adverse cumulative effects, TWN is in the position of having to restore fish and fish habitat within our territory before being able to access and exercise our constitutionally protected aboriginal rights.

Restoration is a key piece of everything we do, and many indigenous communities across Canada are in this same position. Providing clarity that restoration is one of the overall purposes of the Fisheries Act would help to empower the required actions from our governments.

● (1215)

It is also critical that the Government of Canada clearly state that one purpose of the Fisheries Act is reconciliation with indigenous peoples. The legislated respect for the existing rights of indigenous peoples of Canada, as recognized and affirmed under section 35 of the Constitution Act, 1982, would be a strong starting point to add to the purpose of the act.

As you are aware, Canada has stated its support for the United Nations Declaration on the Rights of Indigenous Peoples and its intent to implement UNDRIP. However, we see no mention whatsoever of UNDRIP in the act. Including these amendments in the purpose of the act would make them obligatory considerations in ministerial decision-making.

It would be irresponsible to future generations to ignore the issue of climate change in the revision of the Fisheries Act. Climate change must be considered in all aspects of fish and fish habitat protection, conservation, restoration, biodiversity, cumulative effects assessments, and fisheries management.

According to a study by Weatherdon et al. from 2016, as a result of climate change, it is anticipated that marine fish on the west coast of North America will shift their ranges poleward at a median rate of 10.3 kilometres per decade by 2050, relative to the year 2000. In British Columbia, first nation salmon catches are projected to decrease by 30%, and first nation herring catches will experience a 49% decline.

Without making provisions for climate change in the Fisheries Act, the Government of Canada is setting itself up for legal uncertainty with respect to constitutionally protected aboriginal rights. As currently implemented through policy, the burden is placed on indigenous groups to prove their traditional use and access to a fishery to receive food, and social and ceremonial licence to a particular species or fishing area. This policy has always been, and continues to be, a significant challenge to indigenous groups fully participating in fisheries and reinforces current adversarial challenges between the Government of Canada and indigenous groups.

In an era of rapid environmental change, shifts in species migration patterns, and biodiversity loss, the burden of proof of traditional use and access can no longer limit indigenous fishing opportunities. As our ancestors did, we continue to adapt and access all available resources within our territory that are not restricted by conservation concerns. Accessing new fisheries opportunities like, for example, fisheries migrating from warmer, southern waters, may become a critical climate change resiliency strategy for TWN to protect and maintain the physical, cultural, and economic foundation of our community.

The arbitrary requirement for proof of traditional use or access is outdated in a coastal system affected by climate-change-related impacts, and has no place in a modernized Fisheries Act.

In conclusion, again, I urge the committee to refer to TWN's written submission for more detail and for priority areas of interest. I regrettably did not have time to discuss our views on governance structures, environmental flows, or the rebuilding of fish stocks.

However, I want to remind the committee that to facilitate effective decisions, assessments, and implementation under the Fisheries Act, a concerted effort is required by the Government of Canada to cross-reference and coordinate final legislative drafting between Bill C-68 and Bill C-69. These laws do not exist in complete isolation and must be revised as cohesive and significant pieces of Canada's environmental legal landscape.

We request that the Standing Committee on Fisheries and Oceans refer the specific legal language proposed by TWN on Bill C-69 to the Standing Committee on Environment and Sustainable Development with regard to indigenous jurisdiction and agreements, decision-making, and dispute resolution processes as they relate to the Fisheries Act.

● (1220)

TWN also supports the submissions on Bill C-68 by the FNFC-LFFA coalition and West Coast Environmental Law. We hope that you give their brief special consideration.

Thank you again for the opportunity to provide oral testimony before the committee today. We look forward to further conversations with you or your delegates regarding some of these issues, many of which require further consultation with indigenous groups as you finalize the legislation.

The Chair: Thank you, Mr. Thomas. That was right on time.

We are now going to the Saskatchewan Association of Rural Municipalities, and Ray Orb, the president, by video conference.

You have 10 minutes.

Mr. Ray Orb: My name is Ray Orb, and I am the president of the Saskatchewan Association of Rural Municipalities. SARM is an independent association that represents all 296 rural municipal governments in Saskatchewan.

I appreciate the opportunity to speak to you today about Bill C-68, an act to amend the Fisheries Act and other acts in consequence.

Prior to 2012, the Fisheries Act placed unnecessary regulatory and administrative burdens on municipalities and agriculture producers. The 2012 amendments to the act lessened these burdens. SARM is concerned that the current review and subsequent amendments may re-instate these unnecessary burdens, creating further delays to municipal infrastructure projects, increasing costs, and generally leading to more administrative burden for rural municipalities.

SARM supports ensuring that fish habitats are preserved and that any damage to habitat be mitigated through a balanced approach. Prior to 2012, the act applied to all waterways in Canada, regardless of whether the waterways actually supported fish habitats. Impact assessments and modified design and construction processes were often required for municipal bridges and culverts to accommodate fish habitats that, in many cases, did not exist. Municipal drainage maintenance was hindered by lengthy bureaucratic application processes for permits and authorizations. This resulted in requirements to install larger-than-necessary culverts to accommodate the passage of fish.

These requirements increased the costs of projects and delayed construction timelines, which is a significant burden given Saskatchewan's very short construction season. For example, in the fall of 2011, the rural municipality of White Valley, which is in southwestern Saskatchewan, was replacing a culvert that intersected a seasonal running stream. The Department of Fisheries and Oceans assessed the work and concluded that a larger culvert for fish passage was necessary. This added $28,000 to the overall cost of the project. The cost was borne alone by the municipality's ratepayers, even though Canada as a whole is a beneficiary of fish protection.

The current version of the Fisheries Act effectively balances the need for habitat protection with the need for municipal infrastructure development by focusing on federal oversight of the protection of Canada's commercial, recreational, and indigenous fisheries. This results in increased autonomy for municipalities to use local tools to balance environmental stewardship and infrastructure development on other waterways.

For SARM's members, the 2012 amendments streamlined review processes and improved enforcement mechanisms. These amendments also recognized that waterways such as drainage ditches and agricultural irrigation canals should not be treated in the same way as natural fish habitats.

This past March, SARM had the opportunity to meet with Minister LeBlanc and Minister Goodale to discuss the proposed amendments. At this meeting, we were pleased to learn from the ministers that the intent is not to return to the way things were prior to 2012, and that there is a strong intention to work with municipalities, agriculture producers, and provincial and territorial governments. We believe that making use of Saskatchewan environment officials to conduct investigations and partake in enforcement is an opportunity to avoid a duplication of efforts by using existing provincial services and maximizing fish and habitat protection.

For municipal projects, a code of best practices would benefit municipalities and other stakeholders. By having best practices in place, we can all play a role in environmental sustainability. Minister LeBlanc also mentioned that low, medium, and high-risk projects all need to be treated differently, and SARM is interested in hearing more about what determines what those categories are. SARM recommends that any amendments made to the Fisheries Act take into consideration the municipalities' needs, and that any amendments do not bring back the administrative burdens and project delays that existed before the 2012 amendments were put in place. SARM encourages the federal government to consider providing funding to municipalities and individual land owners for the costs they accumulate while taking measures to maintain publicly beneficial fish and fish habitat for environmental stewardship.

● (1225)

SARM, along with the Western Canadian Municipal Association, strongly agree with the following recommendations by the committee: sufficient protection provisions to act as safeguards for municipalities; the expediting of permitting to allow for works that involve the restoration of damage, infrastructure, and emergency works to protect people and communities; an advisory committee, including municipalities, to provide ongoing recommendations regarding the administration and enforcement of the act.

Streamlining the review processes is important to municipalities, given our short construction season in Saskatchewan. Municipalities must be able to complete emergency projects in a timely manner.

Thank you for the opportunity to speak today. I would be pleased to answer any questions you may have.

The Chair: Thank you very much, Mr. Orb.

Going now to the Canadian Federation of Agriculture, we have Ron Bonnett, who is here at the committee.

You have 10 minutes, please.

Mr. Ron Bonnett (President, Canadian Federation of Agriculture): Thank you.

At the start, I would like to say that, like many of you, I was shocked at the passing of Gord Brown this morning. Gord was a great advocate for agriculture. Our thoughts are with him and his family at this time.

As many of you know, the Canadian Federation of Agriculture is Canada's largest general farm organization. We represent producers through general farm organizations and commodity organizations across all of the provinces. Many of these farmers are impacted by the implementation of the Fisheries Act, particularly with respect to farm drainage.

At the outset, I should say that farmers are stewards of the land and aspire to leave the healthiest environments possible, from one generation of farms to the next. I could even give examples of what has been done on our own farm.

Many find intrinsic value in supporting biodiversity and water quality on the land. At the same time, farmers recognize that they are contributing to the public good and services with little or no compensation provided.

We seek a Fisheries Act that supports, not hinders, farmers' ability to remain good stewards of the land, while remaining profitable and competitive. CFA was concerned that changes to the current Fisheries Act would bring back the problems farmers experienced pre-2012. Indeed, I met with you on November 21, 2016, to provide advice from CFA's perspective on this committee's review of possible changes. We applaud this committee's report. Extensive consultations with Department of Fisheries and Oceans occurred in 2016 and 2017 and I believe that, as a committee, you and the government have listened to our concerns and our advice. The proposed amendments to the Fisheries Act go a long way to addressing Canadian Federation of Agriculture's concerns; however, the devil is always in the details.

Pre-2012, the experience of farmers was not positive, as it was characterized by lengthy bureaucratic applications for permitting and authorizations; a focus on enforcement and compliance measures, which were taken by officials, often with a lack of consistency; and a lack of guidance or outreach on the purpose of the measures being taken, or information on how to navigate through the process. Also pre-2012, the Fisheries Act was cumbersome and created major delays for farmers seeking to do minor work, like clearing drainage systems on their land.

As a former municipal politician, I should mention that some of these same challenges were faced by municipalities for minor works, as outlined by Ray Orb.

With the current Fisheries Act, many farmers were relieved when changes were made a few years ago that drastically improved the timeliness and cost of conducting regular maintenance and improvement of activities to their farm. It lifted the threat of their being deemed out of compliance.

Nevertheless, with this act, there were concerns expressed around a cumbersome DFO permit application process and the lack of information and guidance from the department on how to navigate through the system.

Under the proposed new act, there are many aspects that are welcome, such as the possibility of establishing a minister's advisory panel. That was lacking in previous versions of the act, as farmers and others had no formal means to provide ongoing advice.

There are commitments to streamlining the regulatory burden of the act, which we also welcome. However, further details and regulations need to be developed, before we know whether this will be approachable for farmers and rural municipalities to navigate.

As we understand it from discussions with the Department of Fisheries and Oceans, implicit in these commitments is a commitment by government to consult with those affected.

The proposed act also promises greater clarity for all, which we greatly welcome. The proposed act introduces the development of codes of practice, which would provide guidance for agricultural works and others, with the promise that there would not be a need to apply for and receive a permit for the proposed activity, as long as the farmer follows the codes.

We need to engage the industry in discussion about how these codes of practice are developed.

While further transparency for Canadians is always welcome, again, we need to work with the Department of Fisheries and Oceans on any requirements for farmers to put their information about a project on a public registry, as well as what monitoring and compliance obligations this comes with. For a single owner-operator and small operations, we're concerned that, at the outset, this may place undue regulatory administrative burdens upon farmers, for whom this will be out of their field of expertise.

● (1230)

Farmers may also be concerned about their confidentiality, as, unlike most businesses, farmers live and work at the same address. This public registry may be better suited to projects that require permits, not those that would be developed under the codes of practice.

The CFA welcomes this bill, which includes financial investments to enable the Department of Fisheries and Oceans to manage the transition to a new act and to update regulations and implement them on the ground with the required support and expertise.

The House standing committee in its study of this subject recommended that farmers be given sufficient safeguards, and we maintain that generally accepted agricultural practices and those that actively work to minimize any impact to fish habitat by operations and maintenance should not be unduly burdened by the regulatory process.

We also look forward to working with the Department of Fisheries and Oceans to advance stewardship opportunities over enforcement ones. As I mentioned in a previous appearance, stewardship versus regulation will get farmers to respond and reach the end goal of protecting habitat.

We look forward to working with the Department of Fisheries and Oceans to ensure that the regulations are developed in a manner that respects the agricultural practices that are needed to efficiently and reliably produce food for Canadians and for export.

Thank you.

● (1235)

The Chair: Thank you very much, Mr. Bonnett.

Before we go to questions, on behalf of our committee and all of my colleagues here, I would like to publicly extend our condolences to our Conservative colleagues. When something like this happens—the death of a member—we all stand together as parliamentarians, and our hearts and thoughts are with you today as you go through this difficult time.

Having said that, we will have our first round of questions. Pursuant to the motion adopted on May 1, 2018, the round of questioning will be five minutes each for all parties. We will probably get through one round of questioning before we have to move to the next witnesses. We will be adjourning this meeting at a quarter to two, so that we can be in the House in time for the memorial.

Going to the first round of questioning for five minutes, we have Mr. Hardie on the government side.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Thank you.

I have a question for each of you, so short answers would be appreciated in the five minutes I have.

When we studied the previous government's changes to the act, we did put a lot of emphasis on reserving what we thought were really good ideas that they had brought forward and improving the things that we learned over time needed refining.

I'm going to start with you, Mr. Orb. We now have the standards and codes of practice for small and routine projects. In your view does that set up the kind of framework that the Saskatchewan Association of rural Municipalities could make good use of? Would that fit in with the things that you had been looking for when the changes were originally made?

Mr. Ray Orb: I think it's a good first step. As I mentioned, we did meet with Minister LeBlanc in Regina. He did mention to us that the government was looking at a low, medium, and high risk categorization. We simply need some better definitions. Perhaps it requires more consultation, but we need some better definitions of what the government actually means by low, medium, and high risk.

Low risk to us, I suppose, would be day-to-day operations, but we're not exactly sure about that yet.

Mr. Ken Hardie: Sure. Thank you.

I have a question for Mr. Thomas and the group in North Vancouver. We heard comments from some of the other witnesses about the purposes section. First of all, we were pleased that our recommendation that there be a purposes section was included in the legislation. We've heard from others that the purposes section should include restoration as part of the purposes of the act, but they also indicated that the rebuilding of stock should also be included as a purpose in this act. Do you agree with that?

Mr. Matt Thomas: Yes. I'm going to ask Bridget Doyle, one of my team here, to respond to the questions.

Mr. Ken Hardie: Be brief, if you could, please.

Ms. Bridget Doyle (Natural Resources Planner, Treaty, Lands and Resources Department, Tsleil-Waututh Nation): Yes, we would absolutely agree with that. We included restoration and reconciliation as our top priorities for the act, but we have included in our written brief recommendations for strengthening the rebuilding of stocks. From Tsleil-Waututh's perspective, restoration would include the rebuilding of stocks in our broad view of what restoration could entail.

Mr. Ken Hardie: Thank you very much.

Mr. Bonnett, you're right about the devil being in the details. One of the things that came through to us in our earlier deliberations on the past changes to the act was the details of the relationship with DFO people on the ground. That's not something that you find in legislation or even in regulations. It has more to do with those on-the-ground relationships. How do you see those going forward, particularly through this legislative process?

Mr. Ron Bonnett: I think right off the top we've seen a difference in the relationship. We had Department of Fisheries and Oceans officials come in and meet with our whole board at our last meeting in early April. It almost seemed like there was a difference in attitude within the department on how they deal with the people they're serving. With the fact that there's some extra money allocated for Department of Fisheries and Oceans officials and that the intent of the act talks about consultation with affected partners, I think it's very different.

It almost seemed in the past that you had DFO in their offices in one corner doing what they thought was right, without having consideration to what the implication would be at the ground level. I think it's a change in attitude that is most important.

I see wording in the act where it appears there's been recognition, not only with your committee's report, but also with some of the legislation that's put forward, about building in this relationship between affected parties and the Department of Fisheries and Oceans so that the end goal of preserving fish habitat is met.

● (1240)

Mr. Ken Hardie: Right.

I have one final quick question for Mr. Thomas and the group.

We've heard comments that it would be good to see the guardians program or the chartered patrolman program restored to perhaps where it used to be. That was clearly a direct involvement by indigenous people across the country and in the far north.

Do you agree with that notion?

Ms. Bridget Doyle: Absolutely.

We've been trying to address that at a local level for a number of years now as well. We didn't include that in our written submission just as a matter of space and time, but that's absolutely something we support.

Mr. Ken Hardie: Thank you.

The Chair: You have five seconds left. You did okay.

Now we'll move on to the Conservative side.

Mr. Miller, you are going to start and then share your time with Mr. Arnold. Correct?

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Yes, I am, Madam Chair. Thank you very much for your comments on the passing of our colleague Gord Brown.

Ron, I appreciate your comments as well.

To all of our witnesses, thanks for being here.

Mr. Bonnett, you recognized that some of the changes that were made in 2012 made things easier for agriculture producers, etc.

I think it is fair to point out that SARM—and it's good to see you again, Ray—came to Ottawa when I chaired the rural caucus back in 2005 and initiated the changes in the navigable waterways act. Those changes eventually evolved in 2012. Thank you for that.

With that, I'm going to turn it over to my colleague Mel Arnold.

Mr. Mel Arnold (North Okanagan—Shuswap, CPC): Thank you. I'll be sharing the remainder of my time with Mr. Sopuck as well. I know we have a short time.

Thank you all for being here today. It's a troubling day for all of us. Thank you for your patience in a bit of a late start.

The first question is to our group from TWN. I don't know if I can pronounce your name in full and do it justice.

I've been asking questions in the committee over the past couple of weeks regarding the Nuu-chah-nulth decision by the Supreme Court of Canada, and how that may change what's in the act or may influence what should be in the act.

I'm wondering if you have looked at that decision closely, and if it may change other negotiations or situations across the rest of the west coast, if not all coasts of Canada.

Ms. Bridget Doyle: Yes.

In alignment with the B.C. first nations fisheries coalition's submission, they submitted in their brief a call for further consultation with indigenous groups to define indigenous fisheries. That relates to the need for further consultation. It also relates to our submission related to governance structures and looking at new co-management or joint decision-making structures on specific topics under the Fisheries Act. That may include fisheries management for regions or local areas with indigenous groups as jurisdictions.

Mr. Mel Arnold: Okay. Thank you.

I'll pass the rest of my time to Mr. Sopuck. Since we have a couple of prairie province representatives here, I think Mr. Sopuck will probably have some direct questions.

The Chair: You have two minutes, Mr. Sopuck.

Mr. Robert Sopuck (Dauphin—Swan River—Neepawa, CPC): Mr. Bonnett, the last time I sat on the fisheries committee, I brought up a case of a local issue on the Assiniboine River. It was in a cabinet minister's constituency, actually, who was called in September of 2017 about an obstruction that they needed to remove that was damaging infrastructure. As of April 20 this year, he still hadn't gotten a response, and this is causing some significant infrastructure damage. I would like to share your optimism in the department's ability to work with people on the land, but I think that DFO has a way to go to develop a service-oriented culture, which we hope they will develop.

Mr. Orb, I would assume that SARM is strongly in favour of rural economic development based on our resources.

Mr. Ray Orb: Yes.

Mr. Robert Sopuck: I sit on the environment committee, and we're reviewing the proposed impact assessment act. The Canadian Energy Pipeline Association and other resource associations like the Canadian Association of Petroleum Producers viewed the new Fisheries Act as the "pancaking" of regulations on top of the new Canadian navigable waters act and on top of the new impact assessment act. Investment is fleeing Canada by the billions of dollars because of what the president of the Canadian Energy Pipeline Association called a "toxic regulatory environment". How do you see Saskatchewan prospering in the face of regulations piled on regulations?

● (1245)

The Chair: You have 25 seconds.

Mr. Ray Orb: We see that as an economic impediment to what our province needs to do. Actually, SARM and CAPP have signed a memorandum of understanding so that we can work closer together with our rural municipalities, because many of our rural municipalities have pipelines that go through them. So we need to have a good working relationship with CAPP, which we do.

We're concerned. We're big proponents of Kinder Morgan expanding the capacity of the pipeline. We were big proponents of Energy East as well, seeing that as an outlet for eastern refineries to be able to access western Canadian crude. That's a big issue for us, and we hope that—

The Chair: Thank you, Mr. Orb. I'm sorry, but I'm going to have to cut you off there.

We're going to Mr. Donnelly now for five minutes.

Mr. Fin Donnelly (Port Moody—Coquitlam, NDP): Thank you, Madam Chair.

I'd also like to acknowledge the death of Gord Brown. The New Democrats express our deep condolences to Gord's family and to our Conservative colleagues. It's a real tragedy.

I'd also like to thank all of our witnesses for being here and testifying on Bill C-68, on the Fisheries Act. [*Member speaks in Halkomelem*] to my Tsleil-Waututh cousins providing their testimony. I'd like to start off with Tsleil-Waututh.

You directed the committee to the written submission, which we'll certainly review and look at. I appreciate that. You spoke about section 35, the 1982 amendment to the Constitution. My question is about the revised act. As stands, Bill C-68 right now includes wording about including traditional knowledge, but as you pointed out in your comments, Mr. Thomas, it doesn't include UNDRIP or free, prior, and informed consent. I am wondering if there's an amendment or some wording that you or the nation could suggest about how the legislation could be improved to respect free, prior, and informed consent and UNDRIP, the United Nations Declaration on the Rights of Indigenous Peoples.

Ms. Bridget Doyle: Yes, we have included specific proposed amendments to several clauses. To the purposes section of the act, we have several suggested changes to the new section 2.1, one of which is reconciliation with indigenous peoples, including "respect for the existing rights of the Indigenous peoples of Canada as recognized and affirmed under section 35 of the *Constitution Act, 1982*", and another is including indigenous human rights as set out in the United Nations Declaration on the Rights of Indigenous Peoples. We've also included similar amendments for proposed sections 2.4 and 2.5 for ministerial decision-making.

Mr. Fin Donnelly: Okay. Is that wording in your written submission, or is it separate?

Ms. Bridget Doyle: That's in our written submission.

Mr. Fin Donnelly: Okay. Thank you very much. We'll look for that.

Mr. Thomas, you spoke about the importance of including climate change in the Fisheries Act. Again, the question is about specific wording, because when this committee looks at suggestions or recommendations we're going to look for specific written submissions and testimony from witnesses such as yourselves. Any help you can give with that wording would help the committee in making that recommendation.

Again, do you have any suggestions in either the specific sections or where we might add wording on climate change impacts?

Ms. Bridget Doyle: We have included specific wording for proposed section 2.5, that climate change impacts be included as a ministerial decision-making consideration. Our written brief seeks a commitment from the Government of Canada to incorporate that, which might actually require some consultation to identify the various sections where climate change considerations need to be included. However, we also seek a commitment that through the modernization of the legislation, there is follow-through to modernization of fisheries management policy, because that is where we're most affected on the ground. As written within Bill C-68, in the existing Fisheries Act and the previous Fisheries Act it's not obvious that the burden of proof for traditional use and access would be required for indigenous fisheries. However, our experience with the front-line policy is different from what you might expect, considering the definition in the act.

● (1250)

Mr. Fin Donnelly: Okay. Thank you.

Mr. Thomas, you spoke about strengthening the purposes and including wording on reconciliation in that purposes statement. Again, I am looking for guidance on any wording you might have for the committee to look at.

Ms. Bridget Doyle: We provided specific wording for proposed section 2.1. We added proposed paragraph 2.1(d), and this wording is also consistent with the wording we've provided for Bill C-69, so that the two acts are consistent with including UNDRIP.

Mr. Fin Donnelly: Thank you very much. I really appreciate your testimony.

The Chair: Thank you, Mr. Donnelly.

I want to thank our witnesses. We are out of time for this round.

I'm going to ask that we clear the room as quickly as possible. We have to go in camera for just a very short period of time. Thank you.

[*Proceedings continue in camera*]

● (1250)

(Pause)

● (1255)

[*Public proceedings resume*]

The Chair: Good afternoon. Welcome back to the second part of this meeting.

I would like to let you know that because of the situation that has arisen in the House today, we will be finishing this meeting at 1:30 instead of two o'clock. Basically, we have to be back in the House and will only have time for testimony and no questions.

Appearing as an individual, we have with us today Martin Olszynski, assistant professor, faculty of law, University of Calgary, by video conference. We also have Jean Lanteigne, director general of the Fédération régionale acadienne des pêcheurs professionnels. From the Federation of Canadian Municipalities, we have Daniel Rubinstein, the director of policy and research, and Matt Gemmel, the manager of policy and research.

We are going to start with Mr. Olszynski for the first 10 minutes, please. Thank you.

Professor Martin Olszynski (Assistant Professor, Faculty of Law, University of Calgary, As an Individual): Good afternoon, Madam Chair, and committee members.

Before I get started, I also want to express my condolences on the passing of Gord Brown.

As some members may recall, I had the privilege of speaking to this committee when this process of reviewing and restoring the Fisheries Act began almost two years ago, and I am pleased to be with you here again at the tail end to discuss Bill C-68. I will begin by briefly describing the positive aspects of Bill C-68 before diving into the areas that still need work.

To be clear, although the Fisheries Act amendments appear to have received the most praise out of the suite of legislation introduced in February, we're not there yet. There is still considerable room for improvement.

Among the positives, first and foremost is the restoration of the prohibition against "the harmful alteration, disruption or destruction of destruction of fish habitat", applicable to all fish and fish habitat, as recommended by this committee. The second is the establishment of a public registry, also recommended by this committee, which should go a long way towards enabling transparency and accountability in the management of Canada's fishery resources. Third is the explicit inclusion of cumulative effects and the traditional knowledge of Canada's indigenous peoples as mandatory factors for consideration when authorizing impacts to fish and fish habitat.

There are other good things about this legislation, but recognizing that my time is short I want to move on to those things that still need work. Also, having listened for the past hour, I want to say that I think nothing I'm about to say contradicts the previous witnesses' testimony.

The first issue is the treatment of works undertaken in activities that pose a low—but not zero—risk to fish habitat. Bill C-68 risks perpetuating the current fiction that low-risk projects are no-risk projects and that DFO does not need to monitor them, which is to say, to at least know when and where they occur. Either these will be deemed as avoiding impacts when carried out in accordance with guidelines and codes of practice, such that no notification will be required, or, where no standards exist, DFO will continue to rely on its letters of advice, where, once again, no notification appears to be contemplated.

One of my colleagues here at the University of Calgary, who used to work at the CESD in Ottawa and so knows a thing or two about regulatory effectiveness, is fond of saying, "If you don't measure it, you can't manage it." This is definitely true about the thousands of so-called low-risk projects that cumulatively are having a detrimental effect on Canada's watershed and fisheries resources.

What is required of DFO, perhaps in collaboration with some of Canada's expert fisheries biologists—and there are several of them—is to do the hard work of identifying which projects truly do avoid impacts on fish habitat and which ones do not or are likely to result in some impact, and for the act to require notification for those latter projects—nothing more, but nothing less. If there are concerns about privacy, as the previous witnesses expressed, those can and should be addressed.

Before moving on from this issue, I want to make it clear that there's no question that DFO has the authority to require such notification. Any suggestion to the contrary is based on a misreading or misunderstanding of the relevant case law.

Issue number two is that there's still too much discretion in the act. Probably the most glaring example is in proposed section 2.5, which lists a series of factors that the minister "may" consider when making decisions under the act. To see why this is a problem, you need only replace "may" with "may not", a trick suggested to me by a freshwater biologist here in Alberta. For example, the minister may not consider the sustainability of fisheries; he or she may not consider scientific information; and he or she may not consider the traditional knowledge of indigenous peoples. I think it's pretty clear when you read it this way that there is a problem with this wording, and I can see no reason why the minister would not be bound to some of these factors, except for a reflexive bureaucratic instinct towards discretionary powers and duties.

Third, there should be much clearer parliamentary direction to the minister with respect to his or her annual reports, which, I pause to note, DFO appears to have stopped providing to Parliament since about 2015. There needs to be a clear requirement for the minister to report on the state of fish habitat in Canada, and at a minimum, how much habitat was impacted and how much was restored on an annual basis.

Fourth, with respect to habitat banking, as currently drafted, the banking provisions are unduly narrow, in that they do not permit third party banking. As drafted, the banking provisions will allow only large institutional proponents to create banks for their own use in the future. If the government thinks that banking can be more effective and efficient than the current ad hoc approach to offsetting, as I do, then it needs to be given the conditions to thrive, which includes allowing third party banking.

Fifth, with respect to environmental flows, this is an issue that is consistently neglected under the Fisheries Act, so I'm pleased to see that it got some attention from the minister and in previous hearings of this committee. Bill C-68 amends the fish passage and flow provisions of the act, which will be at proposed subsection 34.3(1). As clearly written, this provision is triggered where the "Minister considers that doing so is necessary to ensure the free passage of fish or the protection of fish or fish habitat".

● (1300)

Bill C-68 could be improved by adding a requesting provision to this power similar to the request provisions found in part 1 of Bill C-69 with respect to regional and strategic assessments, which is a provision that allows a person to request that the minister consider the issue of flows and/or fish passage at a particular area or location, and provide his or her response upon having done that analysis.

On the sixth issue, which I've raised before, I can't understand why almost 10 years after the previous Conservative government introduced them to so many of Environment Canada's environmental laws, the Fisheries Act is still without an administrative monetary penalty, or AMP, regime. As noted by Environment Canada, an AMP is a financial penalty for non-compliance that may be issued by a regulator without court proceedings for the violation of designated legislative requirements, thereby supplementing existing enforcement measures. Bearing in mind DFO's current track record in terms of charges laid, I think it's reasonable to suggest that it needs an additional, less costly tool than regulatory prosecutions.

Those are my prepared remarks this morning. I was prepared to answer many questions, but I understand the situation.

The Chair: Thank you very much.

We will now move on to Mr. Lanteigne for his 10 minutes, please.

[*Translation*]

Mr. Jean Lanteigne (Director General, Fédération régionale acadienne des pêcheurs professionnels): Good afternoon, everyone.

I would also like to offer my condolences on the loss of one of your colleagues.

I will speak in French.

[*English*]

It's strange because the last time you went to Shippagan, I was speaking in English. I have to come to Ottawa to speak in French.

[*Translation*]

First of all, thank you for giving us the opportunity to appear before you a second time in a few months. Even though shrimp fishing began in March and snow crab fishing began last Sunday, you'll understand that I wasn't able to bring it here for sampling, like we did during your quick visit to our offices last fall. The message is quite simple: come back and you can enjoy it again.

Let's get into it and talk about Bill C-68.

After first reading, we find this very interesting. We are delighted with the initiative taken by the Minister of Fisheries, Oceans and the Canadian Coast Guard to clarify and strengthen several aspects of the Fisheries Act.

In visiting the Parliament Buildings, we can see the fishing profession represented in the frescoes decorating the ceiling, beside the logging and hunting-trapping professions. As the old saying goes, when we want to know where we're going, we need to look at where we're from.

To see what is happening today in the fishery sector, there is no doubt that this collective memory has been obliterated for a long time in people's minds, and even more so, in our opinion, in the government's mind.

The federation of fish harvesters that I am representing here today doesn't have a legal advisor or a specialist in the drafting of acts and regulations. As a result, the comments I'm going to make have nothing to do with legalese. They are much more about the reality of fishing in the 21st century and its relationship with the Canadian state.

While fish harvesters used to have an almost heroic image, environmentalists and the media have made the fish harvester a virtual destroyer of the environment who is harming the sustainability of the planet. It isn't surprising that the officials concerned often try, by all possible means, to control, if not counter, fishing activities.

Let's get to the heart of the matter. We have been fishing in Canada since the arrival of Christopher Columbus and Jacques Cartier. There is no doubt that we have a thorough knowledge of fish and fish habitat. However, this is ignored in the proposed section 2.5. There is talk of "community knowledge", but it's so vague that it doesn't really mean anything. For ages, fish harvesters and their associations have been saying to anyone who will listen that nobody listens to them, and section 2.5 is proof of this: we have been totally excluded.

The government is missing a great opportunity to make space at the table for the people who have been in the profession for generations. In short, it's as if we're being told, "take care of fishing, while the government runs your business."

We recognize the government's role and its competence, but it is fairly strange not to give a voice to fish harvesters who are living off the sea and its resources. If anyone should be concerned, you will agree with me that it's the beneficiary user.

This brings us to the advisory committees referred to in the new section 4.01. The beginning of this section talks about the remuneration of the members of these committees. It's unfortunate that it isn't retroactive, because I would have a pension plan that would allow me to retire immediately. Again, it's very vague. What is being referred to? It's hard to say. Let's hope that this isn't a pretext for bringing in all kinds of supposed experts in this or that, who will come from all over to tell us that they hold the truth and that we should apply "their" solution. Do we want to pay the current members of the many advisory committees now? For what purpose? Why? This needs to be clarified.

Beyond the issue of remuneration, we want to share our frustrations with these famous committees.

● (1305)

For starters, there is little or no transparency at all; some proceed with reports, others don't; it's impossible to know what is communicated to the minister; and so on. Therefore, the minister decides everything. Yes, the legislation gives the minister a lot of powers and functions, and we believe that this very dictatorial approach needs to be modernized. In our opinion, the role, composition, functioning and power of these committees must be reviewed. This power must be decentralized, the industry must be given more responsibility, and a simpler administrative framework must be created, which is more in line with the various types of fishing.

Currently, management is done by species, and a different resource becomes the enemy of the other. The sea is not built in compartments, but we have specialized fisheries. This model just doesn't work anymore. In order to maximize our resources and avoid the waste that is happening right now, we need to change the way we operate. Since we don't have a national forum, we speak in a vacuum, and most importantly, we don't talk to anyone.

Yes, the new legislation talks about protecting fish and avoiding killing them, but where is maximizing the benefits discussed?

I will now turn to sections 8 and 11 of the act, which deal with fees and charges. The last time the Fisheries Act was revised, which was done under the previous government, we ended up with a lot of new expenses that were added to the existing licence fees. These included fees for dockside weighing, for sea observers, for science and for at-sea monitoring, which was imposed. This is what people call black boxes or VMS systems, all at the expense of the fish harvester.

As a result, in the case of the crab and shrimp fisheries, the Government of Canada is, in many cases, the second or third expense, after a fish harvester's wages and fuel.

Is this normal? Let's ask the question. For us, we believe that this isn't normal and that, moreover, it is an unfair system. For information purposes, the cost of licences for shrimpers is $66 per metric tonne and $137.50 for crabbers, which for this year represents an average of $35,000 for one and $13,000 for the other. A lobster licence costs $100. In addition, in most other fisheries, fees listed earlier don't have to be paid out. That's the reality.

The department wants to impose electronic logbooks starting in 2019. At the moment, we are shopping with the fish harvester's credit card, and then submit the invoice, without the fish harvester's being able to say anything. It seems to me that this act already has a lot of power in the sector. To use the expression "the devil is in the details", let's hope that the new legislation makes it possible to balance out the situation. We would like to see a more just model for all, based on income rather than arbitrary factors that have nothing to do with the economic reality of a particular fishery.

I'll move on now to owner-operators. We applaud the new provisions of the legislation that seek to protect our way of life and therefore prevent all kinds of individuals and businesses from appropriating the privileges granted to fish harvesters who wish to earn an honest living and who allow our coastal communities to remain vibrant. There is a positive aspect to this case: we are the victims of our success. This is proof that our fishing businesses are prosperous. That's new. Our life used to be one of poverty, subsistence and misery, but we were able to get rid of the big foreign companies that exploited our fish harvesters. That said, vultures are always on the lookout for easy prey. Many law firms are constantly working to find loopholes in the system.

In addition, we must tackle the issue of succession. The question is delicate, and for the moment, the new legislation doesn't really address this difficulty.

● (1310)

With families being smaller, the transfer between parents and their children is less and less possible, and it becomes even more complicated in the situation where fish harvesters would like to be able to share between their children, rather than favour one at the expense of the others.

We submitted to the department a concept of family-type or professional-type company, but its representatives told us that it was difficult and complicated to set up. This isn't easy, but recognizing this power the minister has for issuing permits would allow for proper succession and the end of speculation by stakeholders who are not involved in the fishery and who want to circumvent the law in order to outright rob coastal communities of wealth that belongs to them.

Thank you for listening. I would have been happy to answer your questions, but I understand the situation.

● (1315)

The Chair: Thank you, Mr. Lanteigne.

[*English*]

We'll now go to the final statements from Mr. Rubinstein and Mr. Gemmel.

I'm not sure if you're splitting your time or if one of you will be speaking.

Go ahead. You have 10 minutes, please.

Mr. Daniel Rubinstein (Director, Policy and Research, Federation of Canadian Municipalities): Thank you very much, Madam Chair.

On behalf of FCM's president and our board of directors, I want to acknowledge the passing of Gord Brown and to extend our sympathies, as well, to all of you.

[*Translation*]

Thank you very much for having us here today.

[*English*]

The Federation of Canadian Municipalities welcomes this opportunity to bring Canada's municipal voice to your review of Bill C-68.

As environmental and economic leaders, local governments understand and support federal efforts to protect fish habitat. From coast to coast to coast, communities depend on strong and healthy aquatic ecosystems to support local fisheries, outdoor recreation, tourism, and quality of life.

Prior to the changes made to the act in 2012, municipalities were concerned that the legislation over-regulated low-risk activities and created unnecessary administrative burdens for municipalities. This was due to the fact that all projects, from a hydro dam to a culvert, required the same authorization under the act on all water bodies. These concerns were felt most acutely by our rural municipalities but were experienced by local governments of all sizes across the country. For these reasons, we were supportive of many of the changes that were made to the act in 2012.

At the same time, our members recognized that the blanket removal of the harmful alteration, disruption, or destruction, or HADD, provision had the effect of leaving some fish habitat less well protected and also created legal uncertainty for our members around how and when the new legislation would apply to local infrastructure projects. Further, the changes in 2012 didn't achieve the primary objective that municipalities were seeking, which was to treat smaller, low-risk projects differently.

There are a number of changes proposed in Bill C-68 that directly respond to recommendations we put forward to this committee during your review of the act last year. They include the reintroduction of the HADD provision; the introduction of codes of practice for routine infrastructure projects that follow clear guidelines to reduce impact and avoid HADD; the introduction of habitat offset banking so that municipalities can get credit for fish habitat they have created or restored; and as mentioned earlier, a new national registry that will document all work being undertaken in order to better assess cumulative impacts and make science-based decisions on the impact of fish habitat.

We support these changes, and we appreciate that the government considered our recommendations in drafting Bill C-68.

We're also pleased to see the announcement in budget 2018 of additional funding toward DFO to improve regulatory efficiency, monitoring, and reporting. Increasing the capacity of DFO is a need identified by our members, and we fully support the allocation of additional resources to that end.

Of the changes proposed in Bill C-68, we'd like to highlight in particular the establishment of codes of practice under section 34. This creates a new mechanism to provide guidance to municipalities and other proponents on how to undertake a project in a way that does not cause harm to fish habitat. Under this approach, municipalities won't have to seek an authorization under the act as long as they comply with the code.

We support this proposal as a way to avoid HADD, but it really will be important for DFO to work with municipalities in the near term to develop these codes of practice for a wide range of works. We believe that DFO should have the primary responsibility for developing these codes of practice in consultation with proponents, particularly in the case of municipalities that do not have the resources or expertise to do so on their own. To further assist municipalities in developing these codes of practice, we really are calling on DFO to make funding and other administrative assistance available to municipalities. I want to emphasize that we believe this is something that should happen this fiscal year.

While we welcome the addition of codes of practice to the legislative framework, our view is that, on their own, they won't go far enough to reduce the regulatory burden on small, low-risk municipal projects and operations.

There's one area that's very important to municipal governments that does not appear to have been addressed in the bill, and that's the application of the act to marginal fish habitat. Restoring the former HADD provision without complementary changes will have the impact of applying the act to drainage ditches and other similar bodies where fish are found to be present.

Last year, in response to your standing committee's review of the act, we supported the reintroduction of HADD, but we did recommend that it be re-established as part of a regulatory regime in a way that adequately protects fish and fish habitat without unnecessarily applying to low-risk municipal infrastructure and in water bodies that don't constitute fish habitat. Our recommendation was to develop a new mechanism within the legislation that would identity specific kinds of works, undertakings, and activities related to the construction and maintenance of municipal infrastructure. This mechanism would authorize specific activities to take place without the application of the HADD provision and within applicable terms and conditions meant to provide basic protection for fish and fish habitat.

● (1320)

I want to underscore that, as an order of government, municipalities are fundamentally different from private sector proponents. Municipal infrastructure projects are subject to federal environmental legislation that's been developed with a sense of public input. They're guided by comprehensive, environmental, and land-use policies, and are subject to the approval and oversight of democratically elected councils that are accountable to the public.

Municipal infrastructure is built exclusively to serve the public and is essential to economic activity and to quality of life. Any costs and delays related to building and repairing this infrastructure impact taxpayers and the fiscal sustainability of public budgets, especially at the local level. This is especially pertinent given the federal government's historic long-term infrastructure plan and long-term investments in both new construction and maintenance projects at the local level.

Your committee recognized the unique circumstances of municipalities during your review of the act last year and called on DFO to "put sufficient protection provisions into the Fisheries Act that act as safeguards for farmers and agriculturalists, and municipalities."

Bill C-68 does not adequately do this, and to address the concerns of municipalities, as I mentioned before, a corresponding regulation will need to be developed that exempts works, activities, and undertakings that cause HADD but that have only a limited impact on fish or fish habitat. We're recommending that your committee urge DFO to prioritize the development of that regulation under section 35 of the act.

In conclusion, FCM supports a number of the important changes that have been brought forward by the government in this legislation, but the changes alone will cause delays for municipalities in carrying out routine maintenance or the building of infrastructure with minimum impact on fish habitat.

Again, to underscore, we're recommending that the government prioritize two things: the development of a new regulation under section 35 that exempts works, activities, and undertakings that cause HADD but have only a small impact on fish or fish habitat, such that they do not compromise the objectives of the act; and, again, that DFO proactively work with municipalities to develop codes of practice and to make funding and technical assistance available to municipalities this fiscal year to begin developing these codes.

We look forward to working with DFO to ensure that Bill C-68, once implemented, can work for municipalities of all sizes.

We'd be happy to answer questions from the committee or individual members following the meeting.

Thanks very much.

The Chair: Thank you very much.

We do have six minutes before we have to leave. I don't know if we want to ask one question each. I'm looking to my Conservative colleagues.

No. Okay, we are going to adjourn the meeting then.

Mr. Olszynski, thank you so much for appearing by video conference.

Mr. Lanteigne, Mr. Gemmel, and Mr. Rubinstein, thank you for your testimony today.

The meeting is adjourned.

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